

REISSUE PATENT APPLICATION

Docket No. 06005/34687A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of: ) "EXPRESS MAIL" mailing label No.  
Krivoshein et al. ) EL564457123US  
)  
U.S. Patent No. 5,980,078 ) I hereby certify that this paper and all  
) documents referred to therein as being  
Issued: November 9, 1999 ) enclosed are being deposited with the  
) United States Postal Service "EXPRESS  
For: PROCESS CONTROL ) MAIL POST OFFICE TO ADDRESSEE"  
SYSTEM INCLUDING ) service under 37 C.F.R. §1.10 addressed  
AUTOMATIC SENSING AND ) to: Commissioner for Patents,  
AUTOMATIC ) Washington, D.C. 20231 on this date:  
CONFIGURATION OF )  
DEVICES )  
)  
) Date: November 9, 2001  
Filed: Herewith )  
)  
Group Art Unit: Unknown )  
)  
)  
Examiner: Unknown )

**POWER OF ATTORNEY AND  
REVOCATION OF PRIOR POWERS**

Commissioner for Patents  
Washington, D.C. 20231

Sir:

Fisher-Rosemount Systems, Inc., the assignee of record of the entire right, title and interest in and to U.S. Patent No. 5,980,078, issued November 9, 1999, pursuant to an assignment recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel 8488, Frame 0037, hereby revokes all previous powers of attorney and appoints the following attorneys to transact all business concerning U.S. Patent No. 5,980,078 and to prosecute the referenced accompanying application for reissue thereof:

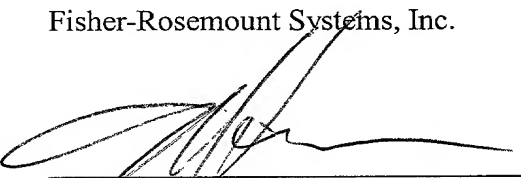
The following attorneys are hereby appointed to prosecute and transact all business in the Patent and Trademark Office connected herewith: John B. Lungmus (18,566), Allen H. Gerstein (22,218), Nate F. Scarpelli (22,320), Michael F. Borun (25,447), Carl E. Moore, Jr. (26,487), Richard H. Anderson (26,526), Patrick D. Ertel (26,877), James P. Zeller (28,491), Kevin D. Hogg (31,839), Jeffrey S. Sharp (31,879), Martin J. Hirsch (32,237), Richard M. La Barge (32,254), Richard B. Hoffman (26,910), James J. Napoli (32,361), Anthony G. Sitko (36,278), Robert M. Gerstein (34,824), James A. Flight (37,622), Roger A. Heppermann (37,641), David A. Gass (38,153), Gregory C. Mayer (38,238), Michael R. Weiner (38,359), and William K. Merkel (40,725), Marshall, Gerstein & Borun at 6300 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606-6402, and Michael L. Sheldon (32,001), Dale A. Kubly (27,569), and Alan L. Carlson (40,939).

I have reviewed the Assignment documents, and to the best of assignee's knowledge and belief, title is in the assignee seeking to take action.

Send correspondence and direct telephone calls to: Roger A. Heppermann, Registration No. 37,641, Marshall, Gerstein & Borun, 6300 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606-6402, telephone number (312) 474-6300.

Fisher-Rosemount Systems, Inc.

By:

  
Michael L. Sheldon  
Assistant Secretary

Date:

11/08/01

REISSUE PATENT APPLICATION

Docket No. 06005/34687A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of: ) "EXPRESS MAIL" mailing label No.  
Krivoshein et al. ) **EL564457123US**  
U.S. Patent No. 5,980,078 ) I hereby certify that this paper and all  
Issued: November 9, 1999 ) documents referred to therein as being  
For: PROCESS CONTROL ) enclosed are being deposited with the United  
SYSTEM INCLUDING ) States Postal Service "EXPRESS MAIL  
AUTOMATIC SENSING AND ) POST OFFICE TO ADDRESSEE" service  
AUTOMATIC ) under 37 C.F.R. §1.10 addressed to:  
CONFIGURATION OF ) Commissioner for Patents, Washington, D.C.  
DEVICES ) 20231 on this date:  
Date: November 9, 2001  
Filed: Herewith )  
Group Art Unit: Unknown )  
Examiner: Unknown )

**ASSIGNEE'S CONSENT TO REISSUE FILING UNDER 37 CFR § 1.172(a)  
AND OFFER TO SURRENDER ORIGINAL PATENT UNDER 37 CFR § 1.178**

Commissioner for Patents  
Washington, D.C. 20231

Sir:

Fisher-Rosemount Systems, Inc, a corporation of the State of Delaware having its principal place of business in Austin, Texas, declares the following upon information and belief of its Assistant Secretary, Michael L. Sheldon:

1. Fisher-Rosemount Systems, Inc. is the assignee and owner of the entire right, title and interest in and to U.S. Patent No. 5,980,078 (hereinafter "the '078 patent") for PROCESS CONTROL SYSTEM INCLUDING AUTOMATIC SENSING AND

AUTOMATIC CONFIGURATION OF DEVICES, the assignment being recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel 8488, Frame 0037.

2. Fisher-Rosemount Systems, Inc. believes Ken D. Krivoshein, and Dan D. Christensen are the inventors of the invention described and claimed in U.S. Patent No. 5,980,078 and in the referenced accompanying reissue application.

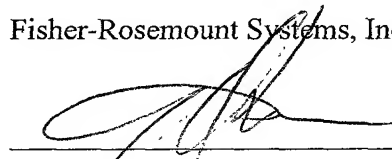
3. Fisher-Rosemount Systems, Inc., as assignee of the entire right, title and interest in and to U.S. Patent No. 5,980,078, consents to the filing of the referenced accompanying reissue application seeking the reissue of this patent.

4. Fisher-Rosemount Systems, Inc. further offers to surrender the original patent upon reaching agreement as to the allowance of the referenced accompanying reissue application. Thus, the original patent is not being submitted with accompanying reissue application. Its surrender, however, is hereby proffered, and it will be forwarded to the Patent and Trademark Office upon being informed that the reissue application is in condition for allowance.

5. Fisher-Rosemount Systems, Inc. further declares that all statements made herein on the knowledge of the undersigned are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the referenced accompanying reissue application or any reissue patent granted thereon.

Fisher-Rosemount Systems, Inc.

By:



Michael L. Sheldon  
Assistant Secretary

Date:

11/08/01

RECEIVED  
JUN 14 1997



*M-4029-IPUS*  
UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

JUNE 17, 1997

PTAS

SKJERVEN, MORRILL, MACPHERSON, ET AL.  
KEN J. KOESTNER  
25 METRO DRIVE, SUITE 700  
SAN JOSE, CA 95110



\*100412461A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, NORTH TOWER BUILDING, SUITE 10C35, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/14/1997

REEL/FRAME: 8488/0037  
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

KRIVOSHEIN, KEN D.

DOC DATE: 02/14/1997

ASSIGNOR:

CHRISTENSEN, DAN D.

DOC DATE: 02/14/1997

ASSIGNEE:

FISHER-ROSEMOUNT SYSTEMS, INC.  
8301 CAMERON ROAD  
AUSTIN, TEXAS 78754

SERIAL NUMBER: 08799966  
PATENT NUMBER:

FILING DATE: 02/14/1997  
ISSUE DATE:

MAURICE CARTER, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

*Added SPT/KK*  
*status*  
FORM 1011-11K (15) NO

*2-14-97*  
DATE *10-24-97*

10037049 10001

ATTORNEY

DOCKET NO.: M-4029.1P US

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark

05-08-1997

MRD 2-14-97

To the Honorable Commissioner of Patents and Trademarks, Please



8 party(ies):

12463 U.S. PTO

08/799966



02/14/97

Name of conveying party(ies):

Ken D. Krivoshein and Dan D. Christensen

100412461

Name: FRANKLIN &amp; FRIEL, INC.

Internal Address:

Street Address: 301 Cameron Road

City Austin State Texas ZIP 78754

Additional name(s) & address(es) attached? ☐ Yes ☒ No

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

## 3. Nature of Conveyance:

- ☒ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: February 14, 1997

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: February 14, 1997

## A. Patent Application No.(s)

Title: "PROCESS CONTROL SYSTEM INCLUDING  
CONFIGURATION OF DEVICES"

Inventors: Ken D. Krivoshein and Dan D. Christensen

## B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Ken J. Koesmer  
Internal Address: SKJERVEN, MORRILL, MacPHERSON  
FRANKLIN & FRIEL  
Street Address: 25 METRO DRIVE, SUITE 700  
City SAN JOSE State CA ZIP 95110

## 6. Total number of applications and patents involved: 1

## 7. Total fee (37 CFR 3.41): \$ 40.00

- ☒ Authorized to be charged to Deposit Account 19-2386  
☒ Charge Deposit Account 19-2386 for any additional fees required for this conveyance and credit deposit account 19-2386 any amounts overpaid

DO NOT USE THIS SPACE

## 8. Statement and signature:

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Ken J. Koesmer  
Name of Person Signing  
Reg. No. 33,004

Signature

Date

Total number of pages comprising cover sheet: 1

Express Mail label number EM31004103202

ATTORNEY DOCKET NO.: M-4029-1P US

**ASSIGNMENT**

72469 U.S. PTO  
08/799966  
02/14/97

For good and valuable consideration, receipt of which is hereby acknowledged, we

Ken D. Krivoshein of Elgin, Texas  
Dan D. Christensen of Austin, Texas

hereby sell, assign and transfer to Fisher-Rosemount Systems, Inc., a Delaware corporation, having a place of business at 8301 Cameron Road, Austin, Texas 78754, its successors and assigns, the entire right, title and interest throughout the world in our invention in

**PROCESS CONTROL SYSTEM INCLUDING AUTOMATIC SENSING  
AND AUTOMATIC CONFIGURATION OF DEVICES**

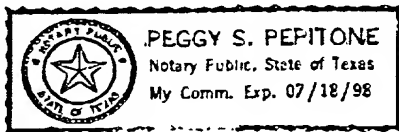
for which we have executed a United States patent application on or about the date of this assignment, and all patent applications and patents of every country for said invention, including divisions, reissues, continuations and extensions thereof, and all rights of priority resulting from the filing of said applications; we authorize the above-named assignee to apply for patents of foreign countries for said invention, and to claim all rights of priority without further authorization from us; we agree to execute all papers useful in connection with said United States and foreign applications, and generally to do everything possible to aid said assignee, their successors, assigns and nominees, at their request and expense, in obtaining and enforcing patents for said invention in all countries; and we request the Commissioner of Patents and Trademarks to issue all patents granted for said invention to the above-named assignee, its successors and assigns.

Executed this 14 day of February, 1997.

K.D. Krivoshein  
Ken D. Krivoshein

State of Texas )  
County of Texas ) ss..

On 2/14/97 before me, Peggy S. Pepitone personally appeared Ken D. Krivoshein personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



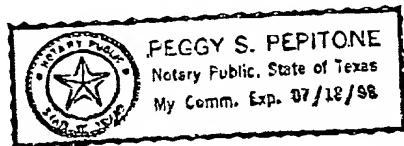
WITNESS my hand and official seal  
Peggy S. Pepitone  
SIGNATURE OF NOTARY

Executed this 14 day of February 1997.

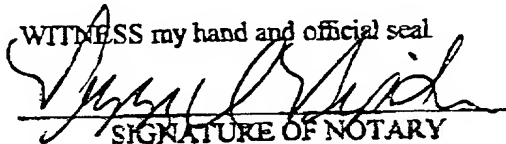
  
Dan D. Christensen

State of Texas )  
County of Travis ) ss..

On 2/14/97 before me, Peggy S. Pepitone personally appeared Dan D. Christensen personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal

  
SIGNATURE OF NOTARY

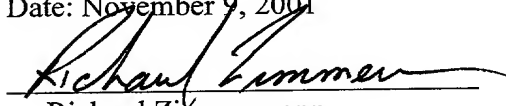
FO50T" 5T04E00T



**REISSUE PATENT APPLICATION**

Docket No. 06005/34687A

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In Re Reissue Application of:	)	"EXPRESS MAIL" mailing label No.
Krivoshein et al.	)	<b>EL564457123US</b>
	)	
U.S. Patent No. 5,980,078	)	I hereby certify that this paper and all
	)	documents referred to therein as being
Issued: November 9, 1999	)	enclosed are being deposited with the
	)	United States Postal Service
For: PROCESS CONTROL SYSTEM	)	"EXPRESS MAIL POST OFFICE TO
INCLUDING AUTOMATIC	)	ADDRESSEE" service under 37 C.F.R.
SENSING AND AUTOMATIC	)	§1.10 addressed to: Commissioner for
CONFIGURATION OF DEVICES	)	Patents, Washington, D.C. 20231 on
	)	this date:
Filed: Herewith	)	
	)	Date: November 9, 2001
Group Art Unit: Unknown	)	
	)	Richard Zimmermann
Examiner: Unknown	)	

**REISSUE DECLARATION**

Commissioner for Patents  
Washington, DC 20231

Sir:

1. We, Ken D. Krivoshein and Dan D. Christensen (hereinafter "Inventors"), hereby declare that our residence, post office addresses and citizenship are as stated below after our names. We believe that we are the original, first and joint inventors of the subject matter which is described and claimed in U.S. Patent No. 5,980,078 (hereinafter the "'078 patent"), issued November 9, 1999, and for which invention we now solicit a reissue patent. The application that matured into the '078 patent was filed on February 14, 1997.

2. We have assigned the entire right, title and interest in and to the '078 patent to Fisher-Rosemount Systems, Inc. as evidenced by the assignment recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel 8488, Frame 0037. We believe that we have the right to make this declaration in accordance with 37 CFR §1.172(a) inasmuch as the referenced accompanying reissue application seeks to clarify the scope of the claims of the

‘078 patent.

3. We hereby state that we have reviewed and understand the contents of the ‘078 patent, including the claims.

4. We believe the ‘078 patent to be partly inoperative or invalid by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent.

5. Specifically, we believe the ‘078 patent to be partly inoperative or invalid, by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent because claims 1, 2, 3 and 22 contain language which may be construed to read on the Foundation™ Fieldbus Specification, as promulgated in 1994-1996, and therefore may exclude others from practicing at least a portion of the Foundation™ Fieldbus Specification. Claims 1, 2, 3 and 22 contain the language “placing the connected device in an accessible state for communicating with a user interface.” The use of the term “accessible state” in claims 1, 2, 3 and 22 may be construed, in light of the Foundation™ Fieldbus Specification, to mean one or more previously known device states which allow a user to access the device, including for example a commissioned state. As written, the language of claims 1, 2, 3 and 22 referring to “accessible state” was intended to refer to a new “standby state” only and not to all states which may be construed as being “accessible” under the Foundation™ Fieldbus Specification, such as the commissioned state described by the Foundation™ Fieldbus Specification. As amended, the language of claims 1, 2, 3, and 22 refers to a “standby state for communicating with a user” and the language of claims 1, 2, and 3 indicate that the communication occurs “prior to commissioning the connected device into a predefined control configuration” and thereby defines the standby state as one in which the device is connected to the network and accessible to a user prior to the device being put into a commissioned state.

6. Further, with respect to claims 4, 5 and 6, we believe the ‘078 patent to be partly inoperative or invalid by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent because claims 4, 5, and 6 contain language which may

be construed to read on the Foundation<sup>TM</sup> Fieldbus Specification and therefore exclude others from practicing at least a portion of the Foundation<sup>TM</sup> Fieldbus Specification. The use of the phrase "distributed controller" in claims 4, 5 and 6 may be construed, in light of the Foundation<sup>TM</sup> Fieldbus Specification, to mean a controller having any type of control logic for performing the specified activities. Claims 4, 5 and 6, however, should refer to a distributed controller having "standby control logic" for sensing a device, supplying initial interconnect information to the device, uploading configuration parameters, and configuring or commissioning the device. Therefore, amending claims 4, 5 and 6 to include "the distributed controller having standby control logic including:" is more closely aligned with the intended scope and meaning of the claims, and cannot to be construed as reading on the Foundation<sup>TM</sup> Fieldbus Specification.

7. The errors occurred during the prosecution of the application that matured into the '078 patent. The above-mentioned errors resulted in our claiming more than the patentees had the right to claim in the '078 patent.

8. The errors occurred because, at the time that the '078 patent was prepared, prosecuted and ultimately issued, we did not have a complete understanding of the scope and meaning of language contained in the claims. This was because we were not aware of the possible broad scope of the term "accessible state" as it related to the states defined or described in the Foundation<sup>TM</sup> Fieldbus Specification.

9. The errors in claiming were first discovered in or around March 2001, when the Fieldbus Foundation informed the assignee that the '078 patent claims may be too broad and may prevent practicing certain portions of the Foundation<sup>TM</sup> Fieldbus Specification. A subsequent assessment of the prior art by the assignee and the Foundation<sup>TM</sup> Fieldbus over a period of time was made. It was after this time that we were convinced that claims 1-6, and 22 may be construed to cover multiple states under the umbrella term of "accessible state," and are therefore too broad in view of the Foundation<sup>TM</sup> Fieldbus Specification. Had we known before the '078 patent issued that we claimed more than we had a right to claim, we would have amended the claims accordingly.

10. Every error which is to be corrected in the present reissue application arose without any deceptive intention on our part.

11. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this reissue application or any reissue patent issued thereon.

Name of First Joint Inventor: Ken D. Krivoshein

First Inventor's Signature: Ken D. Krivoshein

Date: November 8, 2001

Country of Citizenship: United States of America

Residence and Post Office Address: 183 Elgin Woods Lane  
Elgin, Texas 78621

Name of Second Joint Inventor: Dan D. Christensen

Second Inventor's Signature: Dan D. Christensen

Date: November 8, 2001

Country of Citizenship: United States of America

Residence and Post Office Address: 9001 Marthas Drive  
Austin, Texas 78717